FILED
CHAMPAIGN COUNTY OHIO
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CLERK OF COURT OF APPEALS

IN THE COURT OF APPEALS
SECOND APPELLATE JUDICIAL DISTRICT
CHAMPAIGN COUNTY, OHIO

IN THE MATTER OF:	Appeals Court Case Nos.13 CA 63
A.K., C.K. & Z.K.	Tr. Case No. 2007 JI 008 Tr. Case No. 2007 JI 009
THE MINOR CHILDREN	Tr. Case No. 2007 JI 010

MOTION FOR ENBANC REVIEW

Now comes Appellant, Brian Kinter, and hereby requests an ENBANC REVIEW of both Decision's And Final Judgment Entries of February 26, 2015, and this Court's Final Entry of January 9, 2015.

The first Decision And Final Judgment Entry of February 26, 2015 being the answers to the Motion For Reconsideration filed January 20, 2015 and the later, the Decision's And Final Judgment Entry of February 26, 2015 being the answers to the February 5, 2015 Motion For Relief and Motion To Clarify. And then the Final Entry of January 9, 2015.

This court stated, "An application for reconsideration is used to call the court's attention to obvious errors in a decision or to raise issues that the court either failed to consider or did not fully consider when the original decision was made. Mathews v. Mathews, 5 Ohio App3d 140, 143, 450 N.E. 2D 278 (10th Dist.1981)."

The 3 judge panel, leaves one to believe that they knew the trial court judge was a named Defendant in a Federal Tort Action claim initiated by Appellant.

The 3 judge panel further leaves one to believe that they were aware that the Federal case was an open and ongoing case, while the trial court judge adjudicated matters, whereas the trial court judge clearly had a pecuniary interest in these matters.

The 3 judge panel further acknowledged they were aware of the trial court's February 9, 2009 order, which reads in pertinent part, "The court was not able to determine based on the evidence presented if the child was abused or coached, but finds that either is equally damaging".

Evidence was presented that the child had been coached. Though Appellant has been investigated 12 times on alleged allegations of abuse, none have every produced any evidence to justify the allegations.

The three judge panel was provided an Affidavit of Brian Kinter of June 16, 2014, as an attachment to the July 9, 2014 Motion For ExParte Orders, that outlined the continuation by the mother to interfere with the relationship between the children and their father.

The initial custody decree was predicated upon a belief that the child was abused without any finding to solidify that belief.

The mother testified on June 12, 2007 that C.K. had told her that she had been touched inappropriately by her father.

Six and half years later, C.K. testified, that she did not know how she was touched inappropriately. (T.R. 8-26-13, p. 66 1-7)

This court drew a conclusion that the trial court has not assisted in the alienation process, which is not supported by the record.

In fact, the record shows that on November 23, 2011, the trial court suspended visitation between the children and their father for an additional thirteen months, allegedly from what was gleaned during an in-camera interview. This suspension of visitation by the trial court was initiated by another named

Defendant in the Federal Tort Claim Action, the children's attorney, whereas it was alleged that Appellant was abusive, both mentally and physically. No evidence was ever presented that Appellant was abusive, mentally or physically. Nor did the trial court offer any evidence to support the separation of visitation between November 23, 2011 to December 22, 2012.

Nor did the trial court even advise Appellant with specific information as to what the allegation even was, that was levied against him.

On November 18, 2013 the trial court determined there was no justification for the denial of visitation by the mother between September 6, 2011 to November 22, 2011.

Given the trial court's own acknowledgment that there was no justification for the denial of visitation between September 6, 2011 to November 22, 2011, how then can this Court determine there was justification for the trial court to have suspended visitation for an additional thirteen months, without even offering any evidence to support the suspension?

A parent has a fundamental right to protect ones own children, even when he must protect them from a domestic relations terrorist, disguised as a judge.

Under item number 48 of this Court's January 9, 2015 Order reads, "A reasonable inference is that C.K. was upset because she did not want to stay overnight at her father's house, a not unexpected reaction if C.K. believed that she had been abused in the past."

It appears that this Court drew a conclusion that C. K. believed she had been abused, while overlooking the other possibility that the child could have been manipulated into believing she had been a victim of abuse.

It appears the court refuses to answer which is fact and which is fiction.

Was the child touched inappropriately, or was the child coached to believe she had been touched inappropriately? After all, the court acknowledges, either is equally damaging. Given there has never been any evidence that the child had or has been abused, the other alternative must be applied, the child

had been coached.

This court has only aided in the continuation of denial of due process. Whereas this Court stated, "It is well-settled that a trial court retains jurisdiction over proceedings in aid of execution of its judgments, even while those judgments are on appeal," Horvath v. Packo, 6th Dist. Lucas No. L-11-1318, 2013-Ohio-56, ¶ 16. Here, the trial court retains jurisdiction to enforce Appellant's parenting time it previously ordered." (Emphasis added)" "Appellant has attached a copy of a June 17, 2008 Entry Granting Exparte Orders which provided relief similar to that which Appellant seeks. Appellant must file his motion in the trial court so that it may address its parenting time order." (August 28, 2014, Appeal Court's Decision & Entry).

Appellant proceeded as advised by this Court and filed at the Champaign County Court on Sept 9, 2014 to have the parenting time order enforced. On September 11, 2014 Champaign County Denied relief.

On September 16, 2014 Appellant filed a Motion To Mandate Proceedings in Champaign County to this Court.

On October 22, 2014, this Court refused to issue a Motion To Mandate Proceedings in Champaign County, stating in pertinent parts, "We do not find Appellant's Motion well taken" and further stated, "Thus it appears Appellant's relief must come from the Hardin County Juvenile Court."

Appellant again proceeded as directed by this court to have the visitation order enforced, by Hardin County.

After gaining no relief from Hardin County, Appellant filed to this Court, a Motion To Mandate Proceedings in Hardin County on November 21, 2014.

On December 10, 2014 this Court stated, "This court does not have the authority within this appeal to require the Hardin County Juvenile Court to enforce Appellant's parenting time as previously ordered by the Champaign County Common Pleas Court, Domestic Relations-Juvenile-Probate Division of November 18, 2013."

This Court openly acknowledged in the August 28, 2014 Decision & Entry "It is well-settled that a trial court retains jurisdiction over proceedings in aid of execution of its judgments, even while those judgments are on appeal," Horvath v. Packo, 6th Dist. Lucas No. L-11-1318, 2013-Ohio-56, ¶ 16. Here, the trial court retains jurisdiction to enforce Appellant's parenting time it previously ordered." (Emphasis added)" "Appellant has attached a copy of a June 17, 2008 Entry Granting Exparte Orders which provided relief similar to that which Appellant seeks. Appellant must file his motion in the trial court so that it may address its parenting time order."

The record clearly supports Appellant's argument that he has not received that which the trial court and this Court determined Appellant was entitled to, the enforcement of the previously issued parenting time order.

This court glosses over the fact that the trial court judge, previously determined Dr. John Mason was qualified to be an Alienation Expert and later without reason or rational, stated Dr. Mason was no longer an Expert witness.

Appellant argued with good cause that the trial court judge and the children's attorney were named Defendants in an open and pending Federal Tort Action at the time they participated in the 2013 hearings, where as Appellant stated the trial court Judge with the assistances of other named Defendants aided and abetted in the alienation process.

This Court determined it was unclear what more must have been done to qualify the doctor as an expert. And further stated, "we cannot conclude that the trial court's exclusion was reasonable". (Decision and Order 01-09-15, pg 24)

Appellant submitted evidence that it was self serving for the trial court Judge to not allow the Parental Alienation Expert to testify as such and to limit his ability to complete the evaluation as to the degree of the alienation. In order to protect the best interest of the children, it should be paramount that a

determination be made as to rather the children had in fact been abused or if the children had been coached to believe they had been abused. The record in its entirety, provides substantial evidence of that which is fact, and that which is fiction.

This court was further advised of yet another obvious violation of law, Whereas in the 2011 CA 4, 2011-Ohio4536 3 (A.K.II), this court stated, "the trial court was required to conduct an independent review to resolve his objections, engaging in de nova review of facts".

The record clearly established, Appellant was denied that which was required, an independent review.

How can this court turn a blind eye to such violations of law.

The record established, "The court was not able to determine based on the evidence presented if the child was abused or coached, but finds that **either is equally damaging to the child".** And the "information on the abuse allegations came from Ms. Boltz" (T.C. Order 02-09-2009)

It was in error for the trial court to have granted mother custody of the children, prior to reaching a conclusion based on facts, as to rather the child had been abused or coached.

The initial allegation of abuse levied by Ms. Boltz was, that C.K. had allegedly told her, (Ms. Boltz) that she had been touched inappropriately by her father.

C.K. testified that she did not know how she was touched inappropriately. (T.R. 8-26-2013, p 66 1-7)

It seems illogical for a father to lose custody of his children, predicated upon a precept that the child was allegedly touched inappropriately, when the child herself testified, she did not know how she was touched inappropriately.

C.K.'s own testimony revealed that there is never a time at her dad's house where she feels unsafe or uncomfortable. (T,R. 8-26-3013 p. 101)

Appellant stated in the December 9, 2014 Motion For Relief And Motion To Clarify,

"Appellant is fully aware of the fiduciary's desire to protect one of its own, however , this Court has a duty and responsibility to insure Appellant and the children's fundamental rights are protected above

and beyond the fiduciary's desires".

This Court went on to write, "The motion that Brian K. filed on February 5, 2015 expresses confusion over which entity would have the ability to enforce his parenting time , and suggest that this court has an obligation to ensure that a non-custodial parent's rights are equally protected".

It is not a suggestion that the court has an obligation to ensure that a non-custodial parent's rights are protected, it is mandated by contractual law as a condition for the State to receive Federal Funding under Public Law 104-193.

PRAYER FOR RELIEF

WHEREFORE, the above findings are questionable and appear to be against the manifest weight of the evidence ,Appellant respectfully request for this Court to grant an En-Banc review of this case in its entirety.

Brian L Kinter

Brian L. Kinter (Appellant)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was forwarded to Jenise Boltz, Defendant, 244 West Espy Street, Kenton, Ohio 43326, Michael T. Edwards, Attorney for the children, 41 E.Main Street, Enon, OH 45323, and Jacob Jeffries, Guardian ad Litem, 133 S. Main St. New Carlisle, OH 45344, by regular U.S. Mail on this 9th day of March, 2015

Brian L Kinter

Brian L. Kinter